

LABOUR DEPARTMENT

The 19th August, 1981

No. 9(1)81-8 Lab/9196.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s Jaico Steel Fasteners Pvt. Ltd., Faridabad.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 338 of 1978

between

SHRI DAJJA RAM CHAUDHRY, WORKMAN AND THE MANAGEMENT OF M/S JAICO STEEL FASTENERS PVT. LTD., FARIDABAD.

Present.—

Shri Darshan Singh, for the workman.

Shri H.R. Dua, for the management.

AWARD

By order No. ID/FD/IL-110-78/37845, dated 16th August, 1978, the Governor of Haryana referred the following dispute between the management of M/s Jaico Steel Fasteners Pvt., Ltd., Faridabad and its workman Shri Dajja Ram Chaudhry to this Tribunal for adjudication in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Dajja Ram Chaudhry was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 2nd June, 1979 :—

- (1) Whether the termination of services of the workman was justified and in order?
- (2) Relief.

And the case was fixed for the evidence of the management who examined Shri K.C. Pasi, Works Manager, as MW-1 and closed its case. Then the case was fixed for the evidence of the workman who examined himself as WW-1 and closed his case. Arguments were heard. I now give my finding issues-wise :—

Issue No. 1.—MW-1 stated that he was Works Manager and supervises the whole working of the factory. The workman was appointed,—*vide* Exhibit M-1. Exhibits M-2 and M-3 were also given to the workman. The management terminated the service of the workman,—*vide* Exhibit M-4. He further stated that the workman lacked in performance of basic and elementary things which an operator ought to know. The workman lacked even in the very basic aspect. His work was unsatisfactory and caused deterioration in the machine. In cross-examination he stated that they did not give chart of required production from a workman but production of every machine was recorded. Machines were automatic.

The machines have to be set and then run automatically. In case of some defect it was removed by the Operator otherwise he could consult his superior for aid and advice. He further replied that he could not say whether the original of Exhibit W-2 was issued on the basis of the report of a supervisor, but he remembered that the supervisor had made a report. He had gathered information on the basis of Exhibit M-2 and this knowledge was derived at 8-00 a.m. after the workman had got off at 1.00 a.m. Exhibit M-3 might have been issued by the knowledge of the Director himself or the information passed to him. They did not hold any domestic enquiry in this connection.

WW-1 stated that Exhibit W-1 was the original appointment letter issued by the management. He received Exhibit W-2 to W-4 as show cause notices from the management. These letters were replied by him. No enquiry was held on the basis of the show cause notice. There were two supervisors above him. They were Shri Mukherji and Harbir Singh. He was never asked by the Works Manager in the presence of the Supervisor about anything. He was removed from service on 12th May, 1978. He was called in the Director's office and was told that since he participated in the trade union activities he had to go. He was forced to sign a letter which was not allowed to be read. In cross-examination he stated that Exhibit W-5 was the copy of application filed before the Labour Officer. He admitted his signatures on Exhibit M-6. At the relevant time there was a union working in the respondent company but some one told the management that he was bringing some trade union into operation in the company. The Director had abused him two days earlier of his removal. At the relevant time there were 70-80 workmen in the company.

The learned representative for the management argued that there were no standing orders applicable in the company and no enquiry was necessary in the case. There was no mention of trade union activities in the demand notice and story was after-thought. On the other hand the learned representative for the workman argued that the workman was appointed on permanent basis. His services were terminated without any charge-sheet or domestic enquiry. Termination is shown on misconduct and the rules of natural justice were not complied by the management.

I have gone through the appointment letter. Clause No. 1 is reproduced as below :—

“That you have agreed to be in continuous employment of the company for a minimum period of two years with effect from 17th January, 1978. However, in the event of your leaving M/s Jaico Steel Fasteners Pvt. Ltd., before the expiry of two years, you will have to surrender three months salary. Similarly, in case M/s Jaico Steel Fasteners Pvt. Ltd., decides to terminate your services, you will be paid an equal amount except when the termination is on account of misconduct, inefficiency, general retrenchment or close down or such reasons as may be declared by the Government as traitor or being likely to jeopardise the interests, safety of the company and subject to provisions of the Employees State Insurance Act and Workmen's Compensation Act, if you develop serious defect in the eye sight or hearing or mental deficiency, such damages shall not be payable by the Company”.

Termination letter is as under :—

“While you were in 'A' shift on 9th May, 1978, Mr. T.K. Mukherjee, Asstt. Superintendent, had deployed you on the K.B. Trimmer. But till the end of the shift you had not taken out any production so much so even sample pieces were not produced and presented to the Inspection Department for approval. This amply proves your inefficiency to run even the K.B. Trimmer. As a result the Company had suffered loss in production during 'A' shift on the KB Trimmer.

The management, therefore, deeming you to be inefficient in working on the machines and to conscientiously attend to the duties assigned to you, is obliged to terminate your services with immediate effect in terms of para 1 of the appointment letter issued to you,—*vide* our letter No. JSF : PERS : 1 : 78 : 85, dated 17th January, 1978. You may please contact the Accounts Department for the clearance of your dues on production of clearance slip."

According to the appointment letter the workman was to remain into service of the management for a minimum period of two years according to the stipulation. The termination letter speaks of his inefficiency. Other letters speak of that he had no basic knowledge of the machines. I am unable to understand as to how the workman engaged by the management in case he had no technical or basic knowledge of the machines. The stipulation of two years service further strengthen the point that the management must have tested the efficiency of the workman before taking him into service.

The workman has been dismissed from service without any formal charge-sheet or domestic enquiry. The requirement of natural justice were not complied with, therefore, I hold that the termination of services of the workman neither justified or in order. This issue, therefore, is decided against the management.

Issue No. 2.—The workman is entitled to reinstatement with continuity of service and with full back wages.

While answering the reference, I give my award that the termination of services of the workman was neither justified nor in order. The workman is entitled to reinstatement with continuity of service and with full back wages. I order accordingly.

Dated the 29th July, 1981.

M.C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No, 720, dated 4th August, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M.C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 28th August, 1981

No. 9(1)81-8Lab/9544.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s. Kalkaji Compressor Works, (2) Khosla Foundry (P) Ltd., Deepak Pneumatics (P) Ltd., Faridabad.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL
TRIBUNAL, HARYANA, FARIDABAD
Reference No. 101 of 1971

between

THE WORKMEN AND THE MANAGEMENT OF M/S. KALKAJI COMPRESSOR WORKS (2) KHOHLA FOUNDRY (P) LTD, DEEPAK PNEUMATICS (P) LTD., FARIDABAD.

Present.—

Shri S.R. Gupta, for the workmen.

Dr. Anand Parkash and Shri Jagat Arora, for the management.

AWARD

By order No. ID/FD/279-F-71/32348-52, dated 4th November, 1971, the Governor of Haryana, referred the following dispute between the management of M/s. Kalkaji Compressor Works, (2) Khosla Foundry (P) Ltd., Deepak Pneumatics (P) Ltd., Faridabad and its workmen, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the management should pay bonus to the workmen for the year 1970 ?
If so, how much and with what details ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties issue was put as per term of reference. The parties took a long time in filing documents and took many adjournments on one ground or the other. Finally the workman examined Shri K.K. Khuba, Chief Accountant of the respondent as WW-1, Shri Braham Raj Gupta as WW-2 and closed their case. On behalf of the management appeared Shri K. K. Khuba, Chief Accountant as MW-1 and closed their case. Arguments were heard. I now give my finding on the dispute as under :—

WW-1 Shri K.K. Khuba was summoned by the workmen along with original record including ledger, vouchers and minutes book etc. of the management pertaining to all the three companies. He appeared in the witness box but did not bring any record and stated that record was not in his possession and he was not allowed by the Co-ordination Manager to bring that record. He further stated that the Chief Accountant of 1970 was no longer in the service of the management. WW-2 stated that he was in the service of the management from 1962 to 1971. He was President of the union in 1970. He had discussion with officials of the accounts department and learnt that the company had earned huge profits during the year 1970. It was also learnt by him that the management showed expenditure on capital goods in one year, whereas it should have been spread over in many years. It was also learnt that bills on account of TA and interest paid to Directors was shown as very much inflated. The expenditure shown on Engineers when they go out of factory is also shown not correctly. In cross examination he stated that the union had 600-700 workers as its members. He admitted that Deepak Pneumatics Company came into being 1969. He further replied that he had not seen the balance sheet and also admitted that the staff of the accounts department were not members of the union. He further replied that the dispute was adjudicated by the Tribunal and he compromised with the management in the High Court.

MW-1 Shri K.K. Khuba stated that he was in the employment of the company from 1864 and he was Incharge of accounts department since 1974. He was acquainted with the accounts of 1970. At that time it was a private limited company. Accounts of the three companies were audited and he had brought audited balance sheets of the company. Copies were Ex. M-1 to M-3. M/s. Deepak Pneumatics Company was incorporated in 1969. Copy of certificate of incorporation was Ex. M-4. Depreciation charts were Ex. M-5 to Ex. M-7 which were as per Income Tax rules for that year. Copies of development rebate charts were Ex. M-8 to M-10. These were also prepared per Income Tax Rules. Bonus calculation charts prepared by the company were Ex. M-11 to M-13 signed by Shri R. L. Kumar, Secretary Finance who was not in the service of the company now. Donation given in Rx Ex. M-1 to M-3 were per Companies Act. Break up of salary and wages were given in Ex. M-4 to M-15. In cross examination he stated that the Directors of the company were related to each other but the three companies did not belong to the same family. Amount of Rs. 3,68,000 representing estimated value of custom duty, freight etc. on the stock in hand and added to the value and shown in the P and L account had been included in the profits shown for the account year. Because in past stocks were being valued at the invoice of the suppliers. There was a note in the balance sheet at serial number 1 regarding this item. As far as he

knew this amount referred in Ex. M-1 concern raw material and store only. He could not show entry in the accounts book about the same as the amount was estimated value of the custom duty, freight etc. on the closing stock which was carried over to the next year. This amount was an estimated amount and not calculated on each and every items of raw materials and stores in hand. The items of stores and raw material run into thousands. He admitted it as correct that freight and custom duty were paid at the time of import of item in the factory and shown under head purchase of raw material and stores. He did not know the rate of increase of customs in the next year. He was unable to give details of amount of Rs. 1,72,003 shown in note number 2 of auditor's certificate Ex. M-1, similarly details of amounts in notes number 3, 4 and 5 of Ex. M-1. He had not brought the details of items of additions in assets made during the year and shown in Ex. M-5 to M-7. He further replied that depreciation was certified by the Auditors on schedule "C" of the balance sheet but he could not tell the rate of depreciation charges on the assets added during the year. He admitted that Ex. M-5 to M-7 were summarised statements from schedule "C" of the balance sheet. He had not brought the details of amount of Rs. 88,161 shown as warranty claim in Ex. M-1. This expense related to the claims from customers when the finished goods supplied to them did not function properly and the Service Engineer of the company reported for its replacement. He did not know the details and reports on the basis of which warranty claims were calculated and debited to the accounts. He denied the suggestion that Service Engineer were instructed to prepare inflated bills while assessing warranty claims. Services Engineer had no power to purchase raw material from the market to repair compressors at out-stations. He admitted as correct that amount of Rs. 88,861 towards warranty claims appearing in P and L accounts did not include any expense towards local purchase of spare parts. Defective parts were brought back to the factory. He had no details of parts so brought back during the year, nor the value of such parts. The parts which were not repairable and unuseable were treated as junk whereas those parts which could be reused after repairs were taken in stores by means of stores return voucher. He denied the suggestion that such parts were disposed off by the Service Engineer and only proceeds were deposited in the factory. He admitted it as correct that amount of Rs. 9,88,890.82 shown under head establishment related to the head office and branches. It had nothing to do with the factory establishment. Similarly Rs. 37,527 shown as reward and incentive to staff pertained to head office. He had not brought the general entries showing this amount. The provision of bonus was also shown as estimated amount. He denied the suggestion that statements showing interest paid to Directors on monthly credit balance and remuneration paid to them were bogus expenditure. He admitted that assessment of the income for the year under reference was since completed but he had not brought the assessment order. He did not know if the Income Tax Authority had disallowed certain expenses being irrelevant and unnecessary. He had not brought the inventory and opening stock and closing stock and trading account of the three companies. He had also not brought the general entries relating to repairs of building and machineries. He denied the suggestion that a lot of expense of capital nature was included under the head repair and maintenance and building machinery. He had only brought the ledger but it did not show whether the expenditure was revenue expenditure or capital expenditure. He had not brought the vouchers and general entries relating to the items purchases of raw material and stores appearing in manufacturing and trading account. He admitted that bonus charts Ex. M-11 to M-13 had not been audited. He further stated that he had not brought the records while he was summoned by the workmen because he was not allowed by the Co-ordination Manager but he denied if produced that record would have gone against the management.

The learned representative for the workmen argued that the workmen demanded 20 per cent bonus for the year 1970 on the information that the company had made huge profits during the year and only 4 per cent bonus was paid which was received under protest. He further argued that the management did not allow their Chief Accountant who was summoned by the workmen to bring books of documents to prove the case of the workmen and that when the same man appeared on behalf of the management he brought only record which helped the management. So much so he did not give reply for the questions asked by the workmen regarding clarifications and break up of certain accounts. The management did not produce

any register maintained under the Bonus Act and even the income tax assessment order for the relevant year. The representative filed a chart prepared by him to prove that bonus was payable to the workmen of the three companies. He argued that depreciation charges, development rebate donation, and expenditure of building machinery including cars of the Directors be added back. He also wanted that the items in profit and loss account which were unreasonable and unrelated had been inflated with a view to reduce profit and the management deliberately withheld the relevant record to be produced in these proceedings. He objected to the excessive remuneration paid to the persons of the management because the company was a family concern. He also wanted to add back income tax paid for the previous years during the years under reference purchased for the past years paid during this year. The amount of Rs. 3,68,000 being estimated value of Custom duty, freight etc. of stock in hand as pointed out by the Auditors be also added back. Dr. Anand Prakash learned representative for the management controverted the pleas of the learned representative for the workmen and argued that there was no available surplus to justify any higher bonus as the workmen had been paid at the rate of 4 per cent under provision of section 10 of the Payment of Bonus Act, 1965. He relied upon profit and loss account, depreciation charts, development rebate chart and bonus calculation chart filed by the management. He cited 1970 II LLJ page 88 that provision contained in section 23 read with section 25 of the Payment of Bonus Act make it clear that the Labour Court may presume that statements and particulars contained in such profit and loss account to be accurate. He also cited 1973 I LLJ page 487. The learned representative laid great stress on the plea that the workmen had not given specific pleadings and the law of pleadings was fully applicable in the cases before the Industrial Tribunal. He cited 1979 II LLJ page 194. The learned representative referred earlier orders of the Tribunal passed on the applications for seeking certain clarifications from the management and argued that the management had not withheld any information regarding their accounts. He also argued that M/s. Deepak Pneumatics was a new company and section 16(a) explanation (ii) was applicable and no bonus was payable in that company.

I have gone through the file and find that the workmen filed bonus calculation chart dated 13th September, 1976. The management took many opportunities to file their documents and certain clarifications sought by the workmen. As regards the evidence led by the workmen WW-1 the Accountant of the management did not bring any document to prove the contention of the workmen. WW-2 Shri Bharam Raj Gupta an Ex-employee and President of the union 1970 has given a oral statement basing his please on hearsay evidence and conjectures. The only relevant evidence before me for taking into consideration is the balance sheets Exhibit M-1 to M-3 and different charts Exhibit M-5 to Exhibit M-13. By section 23 of the Act there is a presumption about the accuracy of balance sheet and profit and loss account of the companies if duly audited till any trade union a party to the dispute after seeking clarifications to any item of the balance sheet or profit and loss account satisfies the adjudicating authority in this behalf. In this case my learned predecessor directed the management to produce details of the items concerning :—

- (1) Director's Remuneration,
- (2) Director's commission on profits,
- (3) Bank Charge paid to Directors,
- (4) Guarantee commission to Directors,
- (5) Warranty Claim,

by his order dated 31st January, 1975 and rejected the other objections of the workmen. These documents were filed by the management. The workmen filed applications time and again for further clarifications which consumed a lot of time. As regards the contention of learned representative for the management about Deepak Pneumatics Private Limited Company was incorporated in 1969,—*vide* certificate Exhibit M-4. Balance sheet of this

company for the year 1970 has shown a gross profit of Rs. 1,0,8070 and I am of the opinion that section 23 does not provide a bar to the Payment of Bonus in case of available surplus. Even in the written statement no plea was taken by the management on this file. In the balance sheet of M/s. K.G. Khosla & Company (P) Ltd., a net profit of Rs. 24,400 is shown for the relevant year. A great stress was made by the learned representative for the workmen on the following four notes to the balance sheet:—

1. Stocks of Raw Material and Stores in hand were in the past being valued at Invoice cost of the suppliers. The basis of such valuation has been changed in this year. A sum of Rs. 3,68,000 representing the estimated value of custom duty, freight, etc., on the stocks in hand has been added to the value and shown in the Profit and Loss Account. This basis is now proposed to be adopted in future as well.

2. Included in the manufacturing, Trading and Profit & Loss Accounts under various heads are items of debit and credit balances of parties standing in the books for some time past and have been adjusted in this year. A sum of Rs. 1,72,008 is the net difference of credit balances so adjusted.

3. Included also in these accounts under various heads is a sum of Rs. 11,894 being expenses pertaining to earlier years put paid or settled in this year.

4. A sum of Rs. 3,08,160 has been debited to purchase account in addition to the above in respect of goods received and utilized in 1965 for which credit was not given to the supplier in that year through an oversight.

The learned representative for the workmen wanted that these figures should be added back to the profit and loss account. On the other hand Dr. Anand Prakash, learned representative for the management, argued that under section 4, 2nd schedule of the Act, these items could not be added back, but these items do not pertain to items mentioned in the 2nd schedule. These figures pertained to the previous years and taken into account during the year under reference. The management failed to show any entry in the income accounts regarding above figures.

I have considered the items mentioned above and find that item No. 1, 3 and 4 do not pertain to the expenditure for the year under reference. This amount is to be added back to the profit and loss account. The total sum amounts to Rs. 6,88,054. 60% of the amount is distributable among the employees as bonus. It comes to Rs. 4,12,830. According to the management bonus for the year 1970 according to Exhibit M-14 was Rs. 76,000 and to establishment Rs. 40,000. It comes to Rs. 1,06,000. This figure is equal to 4%. Therefore, the workmen are entitled to additional bonus at the rate of 15.60%.

As regards M/s. Khosla Foundry Pvt. Ltd., I do not find any discrepancy in the balance sheet or allow any add back item given by the representative for the workmen in his arguments.

As regards M/s. Deepak Pneumatics Pvt. Ltd I have already held that the workmen are entitled to the payment of minimum bonus for the year 1970 because the management had earned profit during the year under reference. The management is further directed to maintain registers prescribed under the Payment of Bonus Rules, 1965.

I answer the reference in these terms.

M.C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

Dated 10th August, 1981.

No. 723, dated 4th August, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M.C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.